

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV16-09596 JAK

Date April 12, 2017

LA CR87-00422 JAK (12)

Title Javier Vasquez-Velasco v. United States of America
United States of America v. Javier Vasquez-Velasco

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer

Not Reported

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for the United States:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: (IN CHAMBERS) ORDER RE MOTION TO VACATE, SET ASIDE, OR
CORRECT SENTENCE PURSUANT TO 28 USC 2255 (DKT. 1, 3609)**

**GOVERNMENT'S MOTION TO DISMISS PETITIONER'S SUCCESSIVE §
2255 MOTION (DKT. 10) JS-6**

I. Introduction

On December 23, 2016, Petitioner Javier Vasquez-Velasco ("Petitioner") filed a Motion to Vacate, Set Aside or Correct Sentence ("Motion") pursuant to 28 U.S.C. § 2255. The Motion concerns Petitioner's conviction in July 1990 of two counts of aiding and abetting violent crimes in aid of racketeering, in violation of 18 U.S.C. § 1959. The Government did not file an opposition as to the merits of the Motion. Instead, on March 17, 2017, it moved to dismiss the Motion ("Motion to Dismiss" (Dkt. 10)). Petitioner did not file any opposition to the Motion to Dismiss.

A review of these filings shows that, pursuant to Local Rule 7.15, the matters can be decided without a hearing. According, they are addressed in this Order. For the reasons stated, the Motion to Dismiss is **GRANTED**.

II. Factual and Procedural Background

On July 29, 1990, petitioner was convicted of two counts of aiding and abetting violent crimes in aid of racketeering, in violation of 18 U.S.C. § 1959. Petitioner appealed, but his convictions were affirmed. See *United States v. Vasquez-Velasco*, 15 F.3d 833 (9th. Cir. 1994).

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On May 23, 1997, Petitioner who was acting as a self-represented litigant, filed a motion pursuant to 28 U.S.C. § 2255. On November 10, 1997, while represented by counsel, another motion was brought pursuant to the same statute. CR 2184.¹ The arguments made in support of each motion arose from the recantation by a trial witness, Hector Cervantes-Santos. See *Vasquez-Velasco v. Adams*, CV 97-8257. Both motions were denied by former United States District Judge Edward R. Rafeedie. CR 2365. Both Judge Rafeedie and the Ninth Circuit denied certificates of appealability as to the motions. CR 26-5, 26-6.

In 2014, Petitioner sought to pursue the same claims under the same case number. Acting as a self-represented litigant, he filed a “Motion for Fraud.” See *Vasquez-Velasco v. Adams*, CV 97-8257. That motion was denied, as was a Certificate of Appealability. See *id.* at Dkt. 34, 38.

III. Analysis

The Motion to Dismiss asserts that Petitioner has failed to obtain the requisite approval and certification from the Ninth Circuit for leave to file a successive motion pursuant to 28 U.S.C. § 2255(h). That statute provides:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain –

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense[.]

As the prior discussion established, the Motion is one that meets the definition in § 2255 of a successive motion. Dkt. 1 at 3. Petitioner does not allege nor has there been any showing that the Ninth Circuit approved the filing of the Motion. Therefore, there is no jurisdiction at the present time to consider or address the merits of the Motion. See *United States v. Washington*, 653 F.2d 1057, 1059 (9th Cir. 2011); *United States v. Allen*, 157 F.3d 661, 664 (9th Cir. 1998).

IV. Conclusion

For the foregoing reasons, the Motion to Dismiss is **GRANTED WITHOUT PREJUDICE**. Petitioner may

¹ Citations to “CR” refer to the underlying criminal matter, *United States v. Caro-Quintero*, et al, CR 87-0422-JAK.

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seek to renew the Motion should he obtain required approval of the Ninth Circuit.

IT IS SO ORDERED.

Initials of Preparer

: _____
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